IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1741 OF 2005

Prakash Dattatraya Shinde ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. A.P. Mundargi i/by Shri. P.P.Runwal for the Applicant.
Ms M. M. Deshmukh, A.P.P. for the Respondent.

CORAM : A.S.OKA, J.
DATED : AUGUST 02, 2005.

P.C.:

1. Rule. The learned A.P.P. waives service. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. By this Application under section 482 of the Code of Criminal Procedure, 1973, the challenge is to the judgment and order dated 4th December 2004 passed by the learned IInd Adhoc Additional Sessions Judge, Kolhapur by which Revision Application preferred by the Applicant has been dismissed. The Applicant is facing the prosecution for offences punishable under sections 420 and 408 of the Indian Penal Code. The Applicant applied for discharge before the learned Chief Judicial Magistrate, Kolhapur. The Application for discharge made by the Applicant was rejected. Being aggrieved by the said order, Revision Application No.335 of 2003 was filed by the Applicant which has been rejected by the impugned judgment and order.

3. The learned Counsel appearing for the Applicant submitted that the Revision Application was decided in absence of the Advocate for the Applicant as well as the Public Prosecutor. He submitted that Revision Application has been decided without giving an opportunity of being heard to the Applicant. The learned A.P.P. supported the impugned judgment and order by pointing out that the learned Adhoc Additional Sessions Judge has considered the merits of the case.

4. I have considered the rival submissions. Perusal of the impugned judgment and order shows that the learned Judge decided the Revision Application after perusing the record. The impugned judgment and order does not show that any submissions were made either on behalf of the Applicant or on behalf of the Respondent-State. Though in the impugned judgment and order, the learned Judge has not specifically recorded that the Advocates were absent, a perusal of the judgment and order shows that there is no reference to any submission made by any of the Advocates. It is apparent that Revision Application has been decided by the learned judge only on the basis of record. Interest of justice requires that the impugned judgment and order should be set aside and Revision Application should be heard afresh.

5. Hence, I pass the following order:

: O R D E R :

i) The judgment and order dated 4th December, 2004 is quashed and set aside and Criminal Revision Application No.335 of 2003 is restored to file.

ii) The parties are directed to appear before the learned Sessions Judge, Kolhapur on 22nd August, 2005. It is made clear that both the parties will not be served with any separate notice of the Revision Application.

iii) The learned Sessions Judge, Kolhapur may hear the Criminal Revision Application himself or may assign it to any other Court.

iv) Considering the fact that the Revision Application is of the year 2003, the concerned Judge will decide the same as expeditiously as possible.

v) All contentions on merits are kept open.

vi) Rule is made partly absolute in above terms with no orders as to costs.

vii) Parties and concerned Court to act upon an

authenticated copy of this order.

JUDGE